

1 **BILL NO. S-96-02-13**

2 SPECIAL ORDINANCE NO. S-19-96

3 AN ORDINANCE approving Contract #536-  
4 1995, WAYNE NATURAL DRAIN #4  
5 DRAINAGE IMPROVEMENT between  
6 ENTERLINE CONTRACTING INC. and the City  
of Fort Wayne, Indiana, in connection with the  
Board of Public Works.

7  
8 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON  
9 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

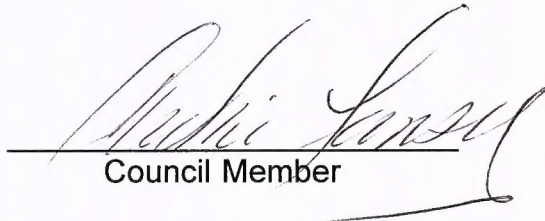
10 SECTION 1. That the Contract #536-1995, WAYNE  
11 NATURAL DRAIN #4 DRAINAGE IMPROVEMENT by and between  
12 ENTERLINE CONTRACTING INC. and the City of Fort Wayne, Indiana, in  
13 connection with the Board of Public Works, is hereby ratified, and affirmed  
14 and approved in all respects, respectfully for:

15 improvements as described in Resolution #536-1995,  
16 attached hereto and made a part hereof;

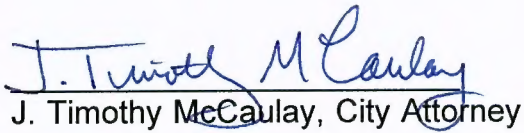
17 involving a total cost of One Hundred Six Thousand One Hundred Thirty-  
18 Eight And no/100 Dollars (\$106,138.00).

19  
20 SECTION 2. Prior Approval has been requested from  
21 Common Council on FEBRUARY 13, 1996. Two copies of said Contract  
22 are on file with the Office of the City Clerk and made available for public  
23 inspection, according to law.  
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1  
2 SECTION 3. That this Ordinance shall be in full force and  
3 effect from and after its passage and any and all necessary approval by  
4 the Mayor.

5  
6  
7   
8 Council Member

9 APPROVED AS TO FORM  
10 AND LEGALITY

11  
12   
13 J. Timothy McCaulay, City Attorney

## RESOLUTION #536-1995

### Wayne Natural Drain #4

RESOLVED by the Board of Stormwater Management of the City of Fort Wayne, Indiana, that:

The construction/improvement of storm drainage intended and adapted for use by property owner(s) whose property abuts thereon and the same is hereby ordered on and along the following described line:

- SEC I:** Beginning at the Southwest corner of Lot #1 Victoria Colony Addition Sec. #1, thence East 650 $\pm$  LF to the center line of Guild Dr. and the end of Sec. I
- SEC II:** Beginning at the center line of Guild Dr., thence East 950 $\pm$  LF to Southeast corner of Lot #12 Victoria Colony Addition Sec II and the end of Sec. II
- SEC III:** Beginning at the Southeast corner of Lot #12, thence South 194 $\pm$  LF to a point; thence East 523 $\pm$  LF to the center line of Radcliff Dr. and the end of Sec. III


Said storm drainage improvement with all appurtenances shall be constructed in accordance with the City of Fort Wayne Sewer Utility Standards and Specifications.

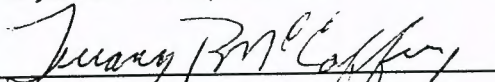
The cost of said drainage improvement shall be paid by Stormwater Utility funds of the City of Fort Wayne.

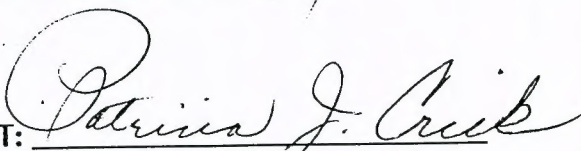
ADOPTED this 6 day of DECEMBER, 1995.

#### BOARD OF STORMWATER MANAGEMENT

  
Linda Buskirk, Chairman

  
C. James Owen, Member

  
Terrance P. McCaffrey, Member

ATTEST:   
Patricia J. Crick, Clerk



## STORMWATER CONTRACT #536-1995

### WAYNE NATURAL DRAIN #4 DRAINAGE IMPROVEMENT

BOARD ORDER NO. 47-95

WORK ORDER NO. 80099

THIS CONTRACT made and entered into this 21 day of FEB 1996, by and between ENTERLINE CONTRACTING hereinafter called **CONTRACTOR** and the **City of Fort Wayne, Indiana**, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Stormwater Management, herein called **OWNER**;

WITNESSETH, that the **CONTRACTOR** and the **OWNER**, for the considerations hereinafter named, agree as follows:

#### ARTICLE I: SCOPE OF WORK

**CONTRACTOR** shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following construction:

- SEC I:** Beginning at the Southwest corner of Lot #1 Victoria Colony Addition Sec. #1, thence East 650 $\pm$  LF to the center line of Guild Dr. and the end of Sec. I
- SEC II:** Beginning at the center line of Guild Dr., thence East 950 $\pm$  LF to Southeast corner of Lot #12 Victoria Colony Addition Sec II and the end of Sec. II
- SEC III:** Beginning at the Southeast corner of Lot #12, thence South 194 $\pm$  LF to a point; thence East 523 $\pm$  LF to the center line of Radcliff Dr. and the end of Sec. III

all according to **Resolution No. 536-1995**, and **Drawing No. SY11335**, Sheets 1-16, and do everything required by this contract and the other documents constituting a part hereof.

#### ARTICLE 2: THE CONTRACT PRICE

The **OWNER** shall pay **CONTRACTOR** for the performance of the contract the unit price sum of **One hundred six thousand One hundred thirty eight & 00/100 Dollars (\$ 106,138.00 )**.

In the event the amount of work is increased or decreased by **OWNER**, the contract sum shall be increased or decreased according to the unit price schedule set forth in the **CONTRACTOR'S** proposal.

### **ARTICLE 3: PROGRESS PAYMENTS AND RETAINAGE**

The **CONTRACTOR** may submit requests for payments no more often than every thirty (30) days for work performed and accepted under the contract. If the contractor is in compliance with the provisions of the contract, the Board will make payments for such work performed and completed. However, in any such case, the Board will retain ten (10%) percent of the total amount owing to insure satisfactory completion of the contract and to insure contractor's compliance with the E.B.E. Rider attached to this contract. Payments to the contractor are not to exceed 90% of the total contract amount until the **OWNER** has verified that the **CONTRACTOR** has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

### **ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT**

Final payment shall be due at the time the work is fully completed and accepted and the contract, including the E.B.E. Rider, is fully performed.

Upon filing of a Completion Affidavit by the **CONTRACTOR** that the work is ready for final inspection and acceptance, the Board of Stormwater Management will direct the Engineering Department of the **OWNER** to promptly make such inspection, and will direct the Contract Compliance Department of the **OWNER** to make a final recommendation on whether the **CONTRACTOR** made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider.

When the Engineering Department finds the work acceptable under the contract and the contract is fully performed, it shall so inform the Board of Stormwater Management. Likewise, when the Contract Compliance Department determines that the **CONTRACTOR'S** efforts constitute good faith efforts to attain the E.B.E. goal as agreed in the E.B.E. Rider, it shall so inform the Board of Stormwater Management through an E.B.E. Compliance Final Report.

Payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. Rider attached hereto.

Upon receiving both the Engineering Department's and the Contract Compliance Department's recommendations, the Board of Stormwater Management shall issue a final certificate stating that the work provided for in this Contract has been completed and accepted, and further stating that the E.B.E. Rider goal has been met. Thereupon, the entire



balance of the contract sum shall be due and payable to the **CONTRACTOR**; provided only that the **CONTRACTOR** shall first furnish **OWNER**, if requested to do so, satisfactory evidence that all persons who have supplied labor, material or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

In the event that the Board of Stormwater Management determines that good faith compliance with the E.B.E. Rider has not occurred, appropriate reduction in the final payment will be made pursuant to paragraph 6 of the E.B.E. Rider attached hereto. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and **CONTRACTOR** agrees to accept the reduced amount as full payment under the terms of his/her contract.

#### **ARTICLE 5: WORKMEN'S COMPENSATION ACT**

The **CONTRACTOR** will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with the Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages or injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of **CONTRACTOR**, or its agents, employees or workmen or any judgment of any court or award of any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any subcontractor or subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said **CONTRACTOR**, shall be conclusive against **CONTRACTOR** as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that **CONTRACTOR** indemnify and hold harmless **OWNER** in the premises.

#### **ARTICLE 6: NON-DISCRIMINATION OF LABOR**

The **CONTRACTOR** further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana, as General Ordinance No. G-34-78 (as amended) on December 12, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of construction or upon request of the Office of Compliance.

## **ARTICLE 7: COMPONENT PARTS OF THIS CONTRACT**

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. Advertisement for Bids, for Contract No. 536-1995
- b. Instructions to Bidders for Contract No. 536-1995
- c. Contractor's Proposal dated January 24, 1996
- d. Fort Wayne Engineering Department Drawing No. SY11335
- e. Supplemental Specifications for Contract No. 536-1995
- f. Workmen's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne
- g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended)
- h. Prevailing Wage Scale
- i. Performance and Guaranty Bond
- j. Labor and Material Payment Bond
- k. Minority/Female Employment Hourly Utilization
- l. Right-of-Way Cut Permit
- m. Comprehensive Liability Insurance Coverage
- n. EBE Declaration Rider

## **ARTICLE 8: GUARANTEE OF WORKMANSHIP**

At the time of execution of this contract, the **CONTRACTOR** shall furnish the following bonds:

- (a) Performance Bond. Guaranteeing faithful execution of the contract in full amount of the contract price, executed by the **CONTRACTOR** and a surety to be approved by the Board on the bond form headed by the Board. The Performance Bond shall contain the following clause: "The said Surety for value received hereby stipulates and agrees that no change, extension of work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the contract, or to the work of specifications."
- (b) Payment Bond. In the amount of payment to be made under the contract.

Upon completion of the work covered hereunder, the **CONTRACTOR** shall furnish:

- (c) Maintenance (or Guaranty) Bond. In the amount of the final contract to guarantee the materials and workmanship for a period of one (1) year following written acceptance of the work by the **OWNER**.



## **ARTICLE 9: INDEMNITY**

**CONTRACTOR** shall furnish to **OWNER** within ten (10) days of the date hereof, a certificate from an insurer acceptable to **OWNER** showing personal property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to **OWNER** and in accordance with the Statutes of the State of Indiana.

## **ARTICLE 10: ADJUSTMENTS OF DISPUTES**

All questions or controversies which may arise between the **CONTRACTOR** and the **OWNER** under the provisions of this Contract shall be subject to the decision of the Director of Board of Stormwater Management of the **OWNER**, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications or other phases of the work covered by this contract will be permitted except on prior written authorization by the Board of Stormwater Management.

## **ARTICLE 11: COMPLETION DATE**

The **CONTRACTOR** agrees to complete the work specified in the contract within 60 consecutive calendar days after having been ordered by the **OWNER** to commence work under this contract.

## **ARTICLE 13: COUNCILMANIC APPROVAL**

Contractual agreements for \$100,000 or more, although executed on behalf of the **OWNER** by the Mayor and Board of Stormwater Management of the City of Fort Wayne, Indiana, shall not be binding upon the **OWNER** unless the contract cost is less than \$100,000; or unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

## **ARTICLE 12:**

This contract is governed by the Laws of the State of Indiana.



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement the day and year first above written.

**CITY OF FORT WAYNE:**


By Paul Helmke, Mayor

**CONTRACTOR:**

By Bryan Enterline President

## BOARD OF STORMWATER MANAGEMENT

**Linda Buskirk, Chairman**

  
C. James Owen, Member

Terrance P. McCaffrey  
Terrance P. McCaffrey, Member

ATTEST.

ATTEST:  
  
Patricia J. Crick, Clerk

ENTERLINE CONTRACTING  
9354 WAYNE TRACE  
FORT WAYNE, IN 46816

## ACKNOWLEDGEMENT

STATE OF INDIANA )  
 )SS  
COUNTY OF ALLEN )

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared Paul Helmke, Mayor; Linda Buskirk, C. James Owen, and Terrance P. McCaffrey all members of the Board of Stormwater Management of the City of Fort Wayne, Indiana, and acknowledged the execution of the foregoing Contract as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and notarial seal this \_\_\_\_\_ day of FEB, 1996.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
Printed Name of Notary  
Resident of \_\_\_\_\_ County

My Commission Expires:

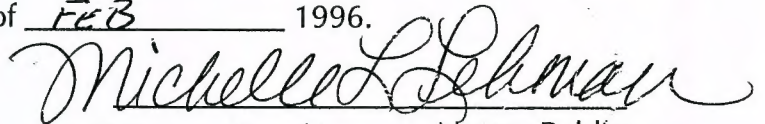
Page 6 Stormwater Contract #536-1995, WAYNE NATURAL DRAIN #4 DRAINAGE IMPROVEMENT

ACKNOWLEDGEMENT

STATE OF INDIANA    )  
                                  )SS  
COUNTY OF ALLEN    )

Before me, the undersigned, a Notary Public, in and for said County and State personally appeared BRYAN ENTERLINE who acknowledged the execution of the foregoing Contract as and for their voluntary act and deed for the uses and purposes therein contained.

WITNESS my hand and seal this 12 day of FEB 1996.



Michelle L. Lehman Notary Public

Printed Name of Notary

Resident of Allen County

My Commission Expires:  
Aug. 24, 1997

This instrument prepared by:  
Michael L. Thomson, P.E.  
Manager, Stormwater Engineering

APPROVED BY THE Common Council of the City of Fort Wayne, Indiana, on the \_\_\_ day of \_\_\_\_\_ 1996.

SPECIAL ORDINANCE: \_\_\_\_\_



**E.B.E. RIDER**

THIS AGREEMENT made and entered into by and between the CITY OF FORT WAYNE, hereinafter referred to as "Owner" and ENTERLINE CONTRACTING hereinafter referred to as "Contractor",

WITNESSETH:

WHEREAS, Contractor is the apparent low bidder on construction project commonly referred to as the WAYNE NATURAL DRAIN #4 DRAINAGE IMPROVEMENT which project was bid under Resolution Number 536-1995; and,

WHEREAS, Contractor agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as "E.B.E.'s" as subcontractors on this project is 10% of the contract amount; and,

WHEREAS, Owner has, pursuant to Executive Order 90-01, adopted a goal of at least 10% of the contract amount to Emerging Business Enterprises as defined under said Executive Order; and,

WHEREAS, said Executive Order states:

"Section 2, Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10% of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded. In the event a contractor is unable to subcontract 10% of the contract amount or secure the services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on which he/she will provide a written description of the efforts taken to comply with the participation goals."

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Conditional Award. Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Rider is attached, Owner awards the construction contract to the Contractor.
2. E.B.E. Retainage Requirements. If the contractor is in compliance with the provisions of the construction contract to which this Rider is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain ten (10%) percent of the total amount owing to insure satisfactory completion of the contract and to insure contractor's compliance with this E.B.E Rider. Upon final inspection and acceptance of the work, and determination by the Fort Wayne Board of Stormwater Management that the contractor has made a good faith effort to subcontract 10 % of the contract amount to emerging business enterprises, the contractor will be paid in full. In the event there is a determination that good faith compliance with this E.B.E. Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this E.B.E. Rider will be made.  
  
If the contract is in excess of \$100,00 the contract will be subject to the Standard Board of Stormwater Management escrow agreement. However, payments to the CONTRACTOR are not to exceed 90% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal



stipulated in this E.B.E. Rider. Payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with this E.B.E. Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this E.B.E. Rider.

3. Request for Waiver. If at the time final payment application is made, contractor has not attained the 10% E.B.E. goal, contractor shall file with the final payment application a "Request for Waiver." Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the 10% E.B.E. goal.
4. Determination of Waiver Requests. The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said Requests for Waiver for the final determination of the Board of Stormwater Management of the City of Fort Wayne.
5. Good Faith Per Se. In any case, a contractor shall be deemed to have made good faith efforts at compliance where E.B.E.'s have been subcontracted for every sub-contract for which there are qualified E.B.E.'s available.
6. Consequence of Non-Compliance. In the event the Board of Stormwater Management approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between 10% and the percentage level met. Said amount shall be added to the City

of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

7. Waiver Approved. In the event the Board of Stormwater Management determines that a good faith effort to comply with this E.B.E. Rider has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

IN WITNESS WHEREOF, the parties have executed this E.B.E. Rider this 21 day of FEB, 1996.

By: Bryan Enterline  
CONTRACTOR

ENTERLINE CONTRACTING  
9354 WAYNE TRACE  
FORT WAYNE, IN 46816

By: BOARD OF STORMWATER MANAGEMENT

Linda Buskirk, Chairman

C. James Owen  
C. James Owen, Member

Terrance P. McCaffrey  
Terrance P. McCaffrey, Member

ATTEST: Patricia J. Crick  
Patricia J. Crick, Clerk



Read the first time in full and on motion by Lunsey,  
and duly adopted, read the second time by title and referred to the  
Committee on City of Ellettsville (and the City Plan Commission  
or recommendation) and Public Hearing to be held after due legal notice, at  
the Common Council Council Conference Room 128, City-County Building, Fort  
Wayne, Indiana, on \_\_\_\_\_, 19\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_  
M., E.S.T. \_\_\_\_\_ at \_\_\_\_\_ o'clock

DATED: 2-27-96

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Hall  
and duly adopted, placed on its passage. PASSED Hall  
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>6</u>			<u>3</u>
BENDER	<u>✓</u>			
CRAWFORD	<u>✓</u>			
EDMONDS				<u>✓</u>
HALL	<u>✓</u>			
HAYHURST	<u>✓</u>			
HENRY	<u>✓</u>			
LUNSEY				<u>✓</u>
RAVINE				<u>✓</u>
SCHMIDT	<u>✓</u>			

DATED: 3-12-96

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne,  
Indiana, as (ANNEXATION) \_\_\_\_\_ (APPROPRIATION) \_\_\_\_\_ (GENERAL)

SPECIAL) \_\_\_\_\_ (ZONING) \_\_\_\_\_ ORDINANCE \_\_\_\_\_ RESOLUTION NO. 1-19-96  
on the 12th day of March, 1996

ATTEST:

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

D. Schmidt  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on  
the 13th day of March, 1996,  
at the hour of 11:00 o'clock A. M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 15th day of March,  
1996, at the hour of 3:00 o'clock P. M., E.S.T.

Paul Helmke  
PAUL HELMKE, MAYOR

**DIGEST STREET**

**TITLE OF ORDINANCE:** Stormwater Contract #536-1995, Wayne Natural Drain #4 Drainage Improvement

**DEPARTMENT REQUESTING ORDINANCE:** Board of Public Works

**SYNOPSIS OF ORDINANCE:** Stormwater Contract #536-1995, Wayne Natural Drain #4 Drainage Improvement is described in the attached Resolution. Enterline Contracting Inc. is the contractor. **PRIOR APPROVAL WAS RECEIVED FEBRUARY 13, 1996.**

**EFFECT OF PASSAGE:** Storm drainage improvement to be completed.

**EFFECT OF NON-PASSAGE:** Storm drainage improvement not to be completed.

**MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS)** \$106,138.00  
(Stormwater Utility)

**ASSIGNED TO COMMITTEE (PRESIDENT):** \_\_\_\_\_



BILL NO. S-96-02-13

REPORT OF THE COMMITTEE ON  
CITY UTILITIES  
ARCHIE L. LUNSEY - DEDE A. HALL - CO-CHAIR  
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving Contract  
#536-1995, WAYNE NATURAL DRAIN #4 DRAINAGE IMPROVEMENT between  
ENTERLINE CONTRACTING INC. and the City of Fort Wayne, Indiana, in  
connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

*Lester Hall*  
*Thomas E. Hayhurst*  
*Martin A. Bunch*  
*Jim Murphy*

DATED: 3-12-96

Sandra E. Kennedy  
City Clerk